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Examiner: Harish T. Dass
Art Unit: 3628

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DATE: March 23, 2006

FROM: Nick P. Patel, Reg. No. 57,365

RE: U.S. Patent Application Serial No. 09/769,036

ATTACHED: PTO Transmittal Form (1 p.), Fee Transmittal for FY 2006 (1 p.), Appeal Brief (29 pp.), Exhibit A (43 pp.), and Exhibit B (4 pp.)

TOTAL NUMBER OF PAGES (INCLUDING THIS ONE) 79

CLIENT/MATTER NO.: 1991-00200

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FEE TRANSMITTAL
For FY 2006

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

☐ Applicant claims small entity status. See 37 CFR 1.27

| TOTAL AMOUNT OF PAYMENT | ($) | 500.00 |

Complete if Known

Application Number	09/809,584
Filing Date	March 15, 2001
First Named Inventor	Mark Rose
Examiner Name	Harish T. Dass
Art Unit	3628
Attorney Docket No.	1991-00200

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):_____

☑ Deposit Account Deposit Account Number: 03-2769 Deposit Account Name: Conley Rose, P.C.

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	Small Entity Fee ($)	SEARCH FEES Fee ($)	Small Entity Fee ($)	EXAMINATION FEES Fee ($)	Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)	Multiple Dependent Claims	
_____ - 20 or HP =	_____ x	_____ =	_____	Fee ($)	Fee Paid ($)

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____ x	_____ =	_____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 =	_____ / 50 =	_____ (round up to a whole number) x	_____ =	_____

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SUBMITTED BY		
Signature	Registration No. (Attorney/Agent) 57,365	Telephone 713-238-8000
Name (Print/Type) Nick P. Patel		Date March 23, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Mark ROSE	§	Confirmation No.:	5899
		§		
Serial No.:	09/809,584	§	Group Art Unit:	3628
		§		
Fi ed:	March 15, 2001	§	Examiner:	Harish T. DASS
		§		
For:	Online Trading System	§	Attorney Docket No.:	1991-00200
	Having Ally-Initiated	§		
	Trading	§	Client Ref No.:	ET-0002-0000

APPEAL BRIEF

Mail Stop Appeal Brief – Patents   Date: March 23, 2006
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

Appellant hereby submits this Appeal Brief in connection with the above-identified application. A Notice of Appeal was filed on March 21, 2006.

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I.   REAL PARTY IN INTEREST

The real party in interest is E*TRADE Group, Inc., a corporation organized and existing under the laws of the State of California, having its principal place of business at 4500 Bohannon Drive, Menlo Park, California 94025. The Assignment from the inventor to E*TRADE Group, Inc. was recorded on April 30, 2001, at Reel/Frame 011815/0538.

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II.   **RELATED APPEALS AND INTERFERENCES**

There are no other prior or pending appeals, interferences or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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III.   **STATUS OF CLAIMS**

Originally filed claims: 1-27.

Canceled claims: None.

Added claims: None.

Allowed claims: None.

Presently rejected claims: 1-27.

Presently appealed claims: 1-27.

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IV.   STATUS OF AMENDMENTS

No amendments were filed after the final Office action dated September 22, 2005.

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V.   SUMMARY OF CLAIMED SUBJECT MATTER

In accordance with various embodiments of subject matter claimed in claim 1, a method is disclosed for substantially accelerating the trading of securities. The method comprises retrieving a variety of information regarding a specific security from an online service provider (paragraph [0018] and Figure 3). The information includes a representation of a link to an online brokerage service (paragraphs [0019] and [0020] and Figures 2 and 3). When the representation is actuated (paragraph [0019]), an order form is automatically retrieved from the online brokerage service. The order form is already customized for online trading of that specific security (paragraphs [0025] and [0026] and Figure 6). The method further comprises completing the order form and submitting the order form to the brokerage service (paragraphs [0026] – [0028] and Figure 6).

In accordance with various embodiments of subject matter claimed in claim 16, a system is disclosed which provides for the efficient trading of securities online. The system comprises a network interconnecting an investor computer, a brokerage computer and a third party computer (paragraph [0015] and Figure 1(C)). The third party computer responds to investment information requests from the investor computer by providing HTML (hyper-text markup language) documents having the investment information and a representation of a link (paragraphs [0018] and [0019] and Figure 3). The link is customized specifically for securities included in the investment information (paragraph [0036]) and comprises a URL (uniform resource locator) address of order software on the brokerage computer (paragraph [0033]).

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VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether under 35 U.S.C. 103(a) claims 1-15 are unpatentable over the combination of http://web.archive.org/web/*/http://www.datek.com 1996 & 1997 ("Datek") in view of Mutual Fund Newsletter ("Newsletter"), Volume 1, April 1, 2000.

Whether under 35 U.S.C. 103(a) claims 16-27 are unpatentable over the combination of Datek in view of U.S. Patent No. 6,226,655 ("Borman").

VII.   ARGUMENT

The claims do not stand or fall together. Instead, appellant presents separate arguments for various independent and dependent claims. After a concise discussion of cited art, each of these arguments is separately argued below and presented with separate headings and subheadings as required by 37 C.F.R. § 41.37(c)(1)(vii). The groupings below are for purposes of appeal only, and should not be construed to mean the patentability of any of the claims may be determined, in later actions before a court, based on the grouping. Instead, the presumption of 25 U.S.C. § 282 shall apply to each claim individually.

A.   Discussion of References Cited by Examiner

1.   Discussion of Datek.com

The Datek.com reference (hereinafter "Datek") cited by the Examiner is a collection of archived hyper-text markup language (HTML) webpages, a copy of which is provided under Exhibit A in the Evidence Appendix. The Datek webpages in Exhibit A have been numbered from 1 – 43 by Appellant for ease of reference.

The Datek home page (page 1) has buttons which link to other webpages on the Datek site. Examples of these buttons include "New Accounts," "Visitor's Center," "Customer Login," etc. Clicking on one of these buttons causes an associated, linked webpage to be displayed. For instance, clicking on the "New Accounts" button causes the New Accounts webpage (page 4) to be displayed. Likewise, clicking on the "Customer Login" button causes a Customer Login webpage to be displayed.

Various Datek webpages contain links which, when clicked, initiate the generation of various forms. Such forms, when filled out by an investor, enable the investor to: obtain real-time quotes (pages 2 and 5), create a new account (pages 2, 4-6), transfer an account from a different brokerage firm to Datek (page 7), etc.

Still other Datek webpages contain links to sites external to Datek. For example, page 24 shows a Datek webpage which lists various accolades Datek has achieved, along with links to the entities which supplied the accolades. For instance, links to BARRON'S®, EXCITE.COM®, E*TRADE®, etc. are provided. These links are not provided

to facilitate trading of securities, but simply to recognize the entities which have accoladed Datek. Likewise, pages 41 – 43 provide links to various financial firms.

Thus, the Datek webpages contain various links to various other Datek webpages and to various sites external to Datek. Datek also enables customers to purchase securities online. However, no Datek webpage contains a link which, when clicked, retrieves an order form from a separate online brokerage, where the order form is customized to order a specific security described on that webpage.

2.   Discussion of Mutual Fund Newsletter, Volume 1, April 1, 2000

The Mutual Fund Newsletter, Volume 1, April 1, 2000 (hereinafter "Newsletter"), a copy of which is provided under Exhibit B in the Evidence Appendix (pages are numbered 1 – 4), discloses a website (www.mutualfundsindia.com) by which an investor may complete a mutual fund application form online and save his or her *personal details* to obtain an identification (ID) and password (page 1). During subsequent visits to the site, the investor must select a scheme name and enter his or her ID and password to log in. Upon log in, a form is generated pre-filled with all of the investor's *personal details*. The Newsletter does not disclose that the form is pre-filled with anything but the investor's personal details. More specifically, Newsletter does not disclose that the form is pre-filled with information pertaining to a specific security.
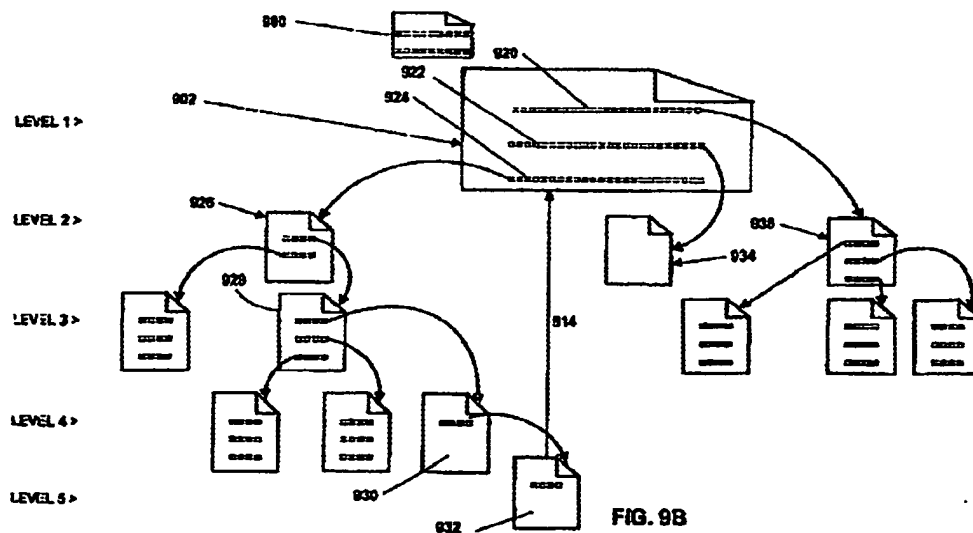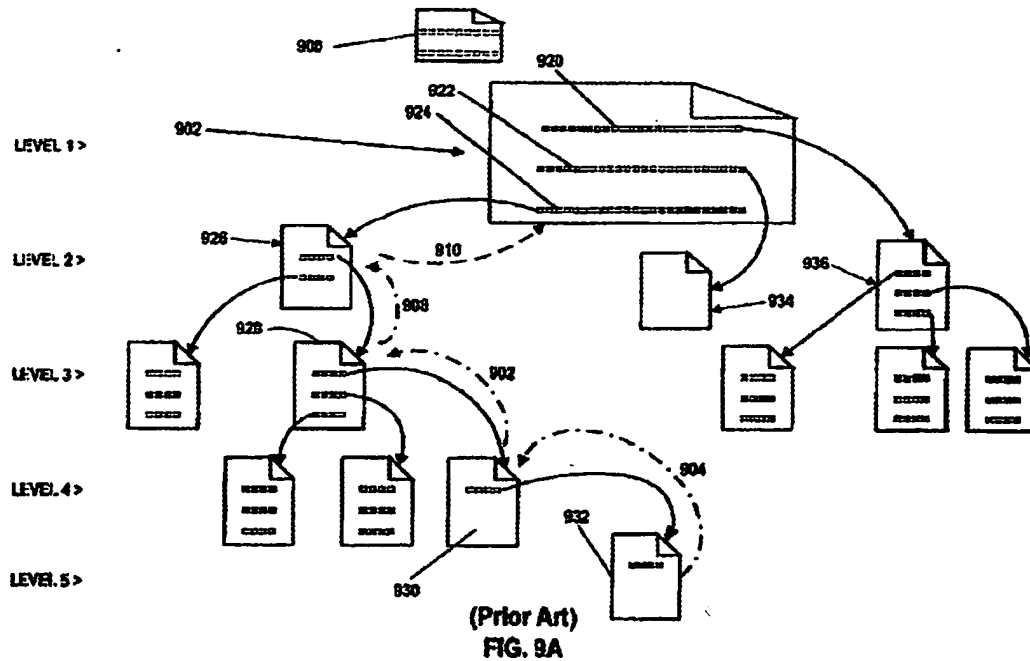
The Newsletter also discloses that the site provides an online investing facility for Prudential ICICI Mutual fund schemes, whereby the investor has the option of selecting a fund according or his or her investment preferences.

3.   Discussion of Borman (U.S. Patent No. 6,226,655)

Figures 9A and 9B are reproduced below for convenience:

(Prior Art)
FIG. 9A

FIG. 9B

Figure 9A is a representation of a prior art searching technique used by individuals when searching the World Wide Web. File 902 represents search results which are obtained when using a search engine such as YAHOO!®, LYCOS®, etc. Items 920, 922 and 924 represent search "hits" which contain links to other webpages. For example, clicking on link 924 causes webpage 926 to be displayed. Webpage 926 also comprises multiple links. For example, clicking on the first link on webpage 926 causes webpage 928 to be displayed; clicking on the first link on webpage 928 causes webpage 930 to be displayed; and clicking on the link on webpage 930 causes webpage 932 to be displayed. Once webpage 932 has been displayed, if the user decides that he or she wants to see the original search-engine hits on page 902, he or she must repeatedly hit the "back" button on his or her web browser until the webpage 902 is located, as demonstrated by dotted arrows 904, 902, 908 and 910.

Figure 9B is illustrative of embodiments of Borman's invention. As indicated by arrow 914, Borman discloses a technique by which an end-user viewing webpage 932 can return directly to webpage 902 without having to step through the intervening webpages 930, 928 and 926.

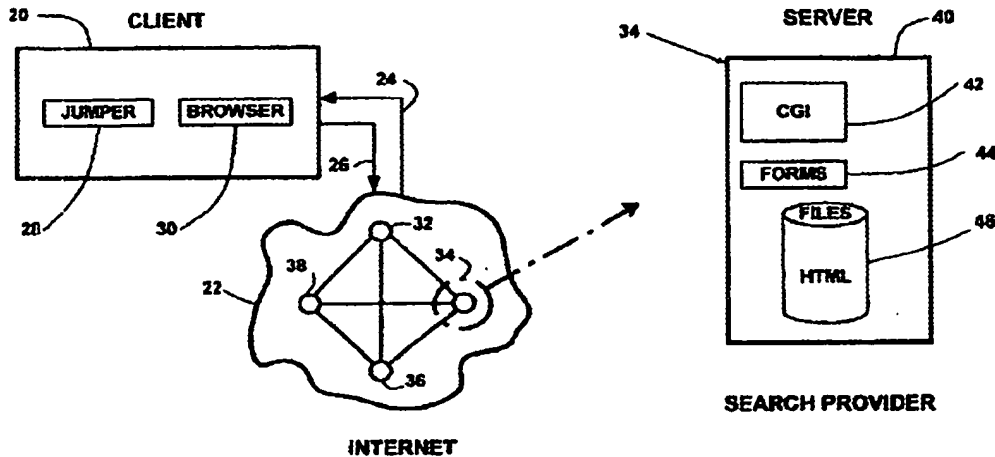Figure 1 of Borman is reproduced below for convenience:

FIG. 1

A jumper 28 is used to implement the above searching technique. The jumper 28 is embedded in a client computer 20 which also contains a web browser 30. The client 20 communicates with an Internet 22 via input line 24 and output line 26. Borman discloses the Internet comprising four servers 32, 34, 36 and 38. However, nowhere does Borman disclose the use of brokerage computers or services, investment research services or investor computers of any kind.

B.   Rejections over Datek and Newsletter

Claims 1-15 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Datek and Newsletter.

The standard for a rejection under 35 U.S.C. 103(a) is *prima facie* obviousness:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

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MPEP 2142. Appellant traverses the rejections due to the reasons provided below.

1.   Claims 1-11 and 15

References do not teach or suggest all claim limitations

Claim 1 requires "retrieving from a service provider information regarding a specific security," where the security-specific information includes "a representation of a link to an online brokerage service." As previously mentioned, Datek discloses links to online brokerage services, such as on pages 41-43, but none of the links are provided in the context of security-specific information, as required by claim 1. Newsletter does not even teach or suggest links associated with security-specific information.

Furthermore, claim 1 recites that actuating the representation initiates the retrieval of "an order form for the specific security from the online brokerage service." Because neither Datek nor Newsletter disclose security-specific information which includes "a representation of a link to an online brokerage service," it follows that the references cannot, and indeed do not, disclose that actuating the representation initiates the retrieval of "**an order form for [that] specific security** from the online brokerage service." At least for these reasons, claim 1 is patentable over the combination of Datek and Newsletter.

In the Advisory Action of January 24, 2006, the Examiner identifies portions of Datek and Newsletter which allegedly read on claim 1. Regarding the limitation "retrieving from a service provider information regarding a specific security, wherein the information includes a representation of a link to an online brokerage service," the Examiner asserts that it is obvious to open a web browser and to use the web browser to open the Datek website and to obtain trading information provided by Datek, where Datek includes links to brokerage services. Regarding the limitation "actuating the representation, thereby retrieving an order form for the specific security from the online brokerage service," the Examiner asserts that because the Datek webpages contain links to brokerage firms, and because the Datek webpages contain links to forms (e.g., New Account application forms, real-time quote forms), the limitation is rendered obvious.

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Appellant submits that the Examiner is dissecting claim 1 in a piecemeal fashion instead of regarding claim 1 *as a whole:*

> In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.

MPEP 2141.02. Thus, although Datek and Newsletter disclose various links and forms, they do not disclose security-specific information comprising a representation of a link to an online brokerage service, where actuating the representation initiates the retrieval of an order form from the online brokerage service and for the particular security.

No suggestion or motivation to combine references

In the Final Office Action of September 22, 2005, the Examiner states that Datek does not explicitly disclose completing the order form and submitting the order form to the brokerage service. The Examiner then states that Newsletter discloses these limitations and can be combined with Datek. Appellant points out that simply because two references *can* be combined does not indicate a *motivation* to combine them:

> The mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)

MPEP 2143.01 (emphasis in original). The Examiner states that the motivation to combine the references is to allow an investor to "fill up a mutual fund application form online and invest easy way." However, because Datek already enables customers to purchase securities online by filling out forms, this benefit is insufficient motivation to combine the two references. In other words, there is no reason to add Newsletter to Datek to achieve a function which Datek already performs.

Claims 2-11 and 15 are included in this group because they depend on claim 1. Based on the foregoing, Appellant respectfully requests that the rejections of the claims in this group be reversed.

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2.   Claims 12 and 13

No suggestion or motivation to modify reference

Because claim 12 depends on claim 1, claim 12 is patentable for at least the same reasons claim 1 is patentable.

In addition, claim 12 is further patentable because it requires that "the parameter portion includes a source parameter indicative of the service provider, and a securities parameter indicative of the specific security." In the Final Office Action, the Examiner admits that Datek does not disclose this limitation, and further states that "these steps are obvious to one skill in the art to links application [sic] program to be executed using hyperlink to retrieve information from server."

Appellant submits that the Examiner is mistaken for a number of reasons. First, in his statement quoted above, the Examiner only addresses a portion of the limitations of claim 11, so the basis for the rejection of claim 12 is unclear. Second, Appellant points out that a statement that the claimed invention is within the capabilities of one of ordinary skill in the art (which Appellant does not admit) is not sufficient by itself to establish *prima facie* obviousness:

> A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made'" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

MPEP 2143.01 (emphasis in original). The Examiner has provided no objective reason to modify Datek. Third, Appellant points out that the fact that a reference *can* be modified does not constitute sufficient motivation to modify the reference:

> The mere fact that references <u>can</u> be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

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MPEP 2143.01 (emphasis in original). Appellant finds nothing in the prior art which suggests the desirability of modifying Datek as suggested by the Examiner.

Claim 13 is included in this group because it depends on claim 12. Based on the foregoing, Appellant respectfully requests that the rejections of the claims in this group be reversed.

3. Claim 14

References do not teach or suggest all claim limitations

Because claim 14 depends on claim 1, claim 14 is patentable at least for the same reasons claim 1 is patentable.

In addition, claim 14 is further patentable because it recites that "the order form includes a field to indicate the specific security, and wherein the brokerage service populates the field with a symbol indicating the specific security before providing the order form." As the Examiner admits in the Final Office Action, Datek does not teach this limitation. The Examiner states that Newsletter teaches this limitation. Appellant respectfully submits that the Examiner is mistaken. Newsletter teaches that a desired form is generated with "all your *personal details* already filled in." In contrast, the above limitation of claim 14 requires populating "[a] field with a symbol indicating the specific security" before the order form is even provided. Personal details, such as a customer's name, address, etc., are different from specific securities.

Based on the foregoing, Appellant respectfully requests that the rejection of this claim be reversed.

C.   Rejections over Datek and Borman

Claims 16-27 stand rejected under 35 U.S.C. 103(a) as obvious over the combination of Datek and Borman. Appellant traverses the rejections due to the reasons provided below.

1.   Claims 16-23 and 27

References do not teach or suggest all claim limitations

Claim 16 requires a network coupled to an investor computer, a brokerage computer and a third party computer. In the Final Office Action, the Examiner admits that

Datek does not disclose these components. The Examiner then states that Borman discloses these features "where Yahoo.com is a third party" and references the Abstract, Figures 1-2 and 4-5B, 1:15-2:62 and 5:46-6:10 of Borman. The Examiner is mistaken. A thorough search of Borman reveals that although Borman discloses a network of computers (Figure 1), brokerage computers and investor computers apparently are not disclosed. In fact, it appears that brokerage services, investment services, etc. are not even mentioned.

Claim 16 further requires that the third party computer provides "HTML documents having the investment information and a representation of a link," wherein the link is a URL address of "order software on the brokerage computer," and wherein "the link includes an indicator of a specific security associated with the investment information." Neither Datek nor Borman discloses these limitations. Datek discloses links to various brokerage firms, etc., but does *not* teach or suggest a link *specifically designed* to include an indicator of "a specific security associated with the investment information." Likewise, Borman discloses URLs to access various webpages, but does not disclose a link including an indicator of "a specific security associated with the investment information."

No suggestion or motivation to combine references

In the Final Office Action, the Examiner admits that Datek does not disclose "a network, an investor computer coupled to the network, and a brokerage computer coupled to the network, and, and [sic] wherein the third party computer implements an investment research device." The Examiner then states that Borman discloses these features. Apart from the fact that neither Borman nor Datek discloses these features, as established above, the Examiner's only motivation to add Borman to Datek is "to allow user purchase securities over the Internet." Appellant submits that this is insufficient motivation, since Datek already enables users to purchase securities over the Internet. There is no need to add Borman to Datek to achieve a benefit that Datek already has.

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Claims 17-23 and 27 are included in this group because they depend on independent claim 16. Based on the foregoing, Appellant respectfully requests that the rejections of the claims in this group be reversed.

2. Claims 24 and 25

No suggestion or motivation to modify reference

Because claim 24 depends on claim 16, claim 24 is patentable at least for the reasons claim 16 is patentable.

In addition, claim 24 is further patentable because it requires that "the parameter portion includes a source parameter indicative of the service provider, and a securities parameter indicative of the specific security." In the Final Office Action, the Examiner admits that Datek does not disclose this limitation, and further states that "these steps are obvious to one skill in the art to links application [sic] program to be executed using hyperlink to retrieve information from server."

Appellant submits that the Examiner is mistaken for a number of reasons. First, in his statement quoted above, the Examiner only addresses a portion of the limitations of claim 23, so the basis for the rejection of claim 24 is unclear. Second, Appellant points out that a statement that the claimed invention is within the capabilities of one of ordinary skill in the art (which Appellant does not admit) is not by itself sufficient to establish *prima facie* obviousness:

> A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made'" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000).

MPEP 2143.01 (emphasis in original). The Examiner has provided no objective reason to modify Datek. Third, Appellant points out that the fact that a reference *can* be modified does not constitute sufficient motivation to modify the reference:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

MPEP 2143.01 (emphasis in original). Appellant finds nothing in the prior art which suggests the desirability of modifying Datek as suggested by the Examiner.

Claim 25 is included in this group because it depends on claim 24. Based on the foregoing, Appellant respectfully requests that the rejections of the claims in this group be reversed.

3. Claim 26

Because claim 26 depends on claim 16, claim 26 is patentable at least for the same reasons claim 16 is patentable.

In addition, claim 26 is further patentable because it recites that "[a] brokerage computer is configured to respond to a request activated by [a] link by sending an HTML document to [an] investor computer, wherein HTML document is a securities order form that indicates the specific security associated with the investment information." The Examiner does not specify in the Final Office Action precisely where Datek discloses this limitation, and Appellant is unable to find any teaching or suggestion in Datek of this limitation. Datek does disclose various forms and documents, such as forms to register for new accounts, to request quotes, etc. However, Datek does not disclose the HTML documents having investment information and a representation of a link, where a brokerage computer is configured to respond to a request activated by the link by sending an HTML document to an investor computer, and where the HTML document "is a securities order form that indicates the specific security associated with the investment information." Borman does not satisfy the deficiencies of Datek.
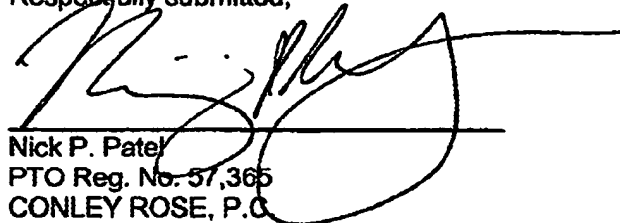
Based on the foregoing, Appellant respectfully requests that the rejection of this claim be reversed.

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D.   Conclusion

For the reasons stated above, Appellant respectfully requests that the rejections be reversed, and the claims set for issuance. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Conley Rose, P.C.'s Deposit Account No. 03-2769.

Respectfully submitted,

Nick P. Patel
PTO Reg. No. 57,365
CONLEY ROSE, P.C.
(713) 238-8000 (Phone)
(713) 238-8008 (Fax)
AGENT FOR APPELLANT

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VIII.   CLAIMS APPENDIX

1. (Original) A method for trading securities, wherein the method comprises:

> retrieving from a service provider information regarding a specific security, wherein the information includes a representation of a link to an online brokerage service;

> actuating the representation, thereby retrieving an order form for the specific security from the online brokerage service;

> completing the order form; and

> submitting the order form to the brokerage service.

2. (Original) The method of claim 1, wherein the specific security is a particular company's stock.

3. (Original) The method of claim 1, wherein the specific security is a particular mutual fund.

4. (Original) The method of claim 1, wherein the specific security is a particular option.

5. (Original) The method of claim 1, wherein the service provider provides an investment research service.

6. (Original) The method of claim 1, wherein the information includes one or more price quotes for the specific security.

7. (Original) The method of claim 1, wherein the information includes recent news about the specific security.

8. (Original) The method of claim 1, wherein the representation is a button icon.

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9. (Original) The method of claim 1, wherein the representation is a button icon with a "Trade Now" label.

10. (Original) The method of claim 1, wherein the link includes a root portion, a software routine indicator portion, and a parameter portion.

11. (Original) The method of claim 10, wherein when the specific security is a mutual fund, the software routine indicator indicates a first software routine that generates a mutual fund purchase order form, and wherein when the specific security is a stock or stock option, the software routine indicator indicates a second, different software routine that generates stock and stock option order forms.

12. (Original) The method of claim 10, wherein the parameter portion includes a source parameter indicative of the service provider, and a securities parameter indicative of the specific security.

13. (Original) The method of claim 12, wherein the parameter portion further includes a transaction parameter indicative of a security type to which the specific security belongs.

14. (Original) The method of claim 1, wherein the order form includes a field to indicate the specific security, and wherein the brokerage service populates the field with a symbol indicating the specific security before providing the order form.

15. (Original) The method of claim 1, wherein said completing includes entering a password into a corresponding entry field in the order form.

16. (Original) A system for trading securities, wherein the system comprises:
    a network;
    an investor computer coupled to the network;

a brokerage computer coupled to the network; and

a third party computer coupled to the network, wherein the third party computer is configured to respond to investment information requests from the investor computer by providing HTML (hyper-text markup language) documents having the investment information and a representation of a link, wherein the link is a URL (uniform resource locator) address of order software on the brokerage computer, and wherein the link includes an indicator of a specific security associated with the investment information.

17. (Original) The system of claim 16, wherein the specific security is a particular company's stock.

18. (Original) The system of claim 16, wherein the specific security is a particular mutual fund.

19. (Original) The system of claim 16, wherein the specific security is a particular stock option.

20. (Original) The system of claim 16, wherein the third party computer implements an investment research service.

21. (Original) The system of claim 16, wherein the representation is a button icon with a "Trade Now" label.

22. (Original) The system of claim 16, wherein the link includes a root portion, a software routine indicator portion, and a parameter portion.

23. (Original) The system of claim 22, wherein when the specific security is a mutual fund, the software routine indicator indicates a first software routine that generates a

mutual fund purchase order form, and wherein when the specific security is a stock or stock option, the software routine indicator indicates a second, different software routine that generates stock and stock option order forms.

24. (Original) The system of claim 22, wherein the parameter portion includes a source parameter indicative of the service provider, and a securities parameter indicative of the specific security.

25. (Original) The system of claim 24, wherein the parameter portion further includes a transaction parameter indicative of a security type to which the specific security belongs.

26. (Original) The system of claim 16, wherein the brokerage computer is configured to respond to a request activated by said link by sending an HTML document to the investor computer, wherein HTML document is a securities order form that indicates the specific security associated with the investment information.

27. (Original) The system of claim 26, wherein the order form includes a password entry field.

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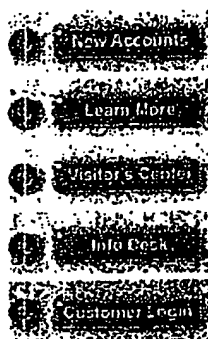
IX.   EVIDENCE APPENDIX

Exhibit A contains pages 1 – 43 of Datek.

Exhibit B contains pages 1 – 4 of Newsletter.

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EXHIBIT A

DATEK REFERENCE

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Trade Stocks Faster and Cheaper

D atek, the leader in automated order execution systems for the last five years, is finally opening its lightning fast trading systems to the investing public. Now any public customer can trade any NYSE and NASDAQ™ stock for only $9.99 per execution directly over the Web using the same systems that our traders and customers use to place over 70,000 orders a day.

We enter more than 50% of all electronic orders in the NASDAQ™ stock market, so we know we can handle your order. If your order is marketable and does not get executed within one minute, you don't pay any commission charge. Beat that.

At Datek Online, we put the power in your hands. You make your own decisions. You place your own trades. You don't need to wait for a broker to get back to you with a report. At Datek Online you use our user-friendly trading reports to track your orders and your portfolio via the Web. It's secure, it's accurate, and it's fast.

Just see for yourself. Fill out our on-line new-account form, and we will give you real-time NASDAQ quotes absolutely FREE! Why wait?

Fill out the on-line form and get free real-time quotes.
How about right now?

If you already have an account, click on Customer Login

The more you know, the better you can appreciate why fast executions are so important.

Fast executions, prompt trade confirmations, and real-time stock quotes reduce risk by giving you more control over your orders.

For an in-depth analysis of how NASDAQ operates read this article from Forbes.

Click Here Now!

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Page

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. New Accounts

    ⬜ **SECURE ONLINE APPLICATION FORM**

    ⬜ **unSECURE ONLINE APPLICATION FORM**
            (if you can't connect to the secure link)

    ⬜ **GUIDE TO OPENING AN ACCOUNT**

    ⬜ **ACCOUNT DEMONSTRATION**

    ⬜ **BRIEF OVERVIEW OF DATEK ONLINE**

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Datek, the leader in automated order execution systems for the last five years, is finally opening its lightning fast trading systems to the investing public. Now customers can trade up to 5,000 shares of any New York Stock Exchange (NYSE), American Stock Exchange (Amex) or Nasdaq stock for only $9.99 per execution using the same systems that our traders and customers use to place over 100,000 orders a day.

At Datek Online, we put the power in your hands. You make your own decisions. You place your own trades. You don't need to wait for a broker to get back to you with a report. At Datek Online you use our user-friendly trading reports to track your orders and your portfolio via the Web. It's secure, it's accurate, and it's fast!

Just see for yourself. Fill out our online new account form, and we will give you unlimited real time Nasdaq, AMEX and NYSE quotes, graphs, charts and news absolutely FREE! Why wait?

Fill out the online form and get free real time quotes.
How about right now?

If you already have an account, click on Customer Login.

All the information you need to know about your account and more can be found in our Customer Guide.

The more you know the more you'll appreciate what Datek has to offer.

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New Account Forms
Choose the account that you would like to open.

Individual	IRA	Keogh
Custodian	Trust	Corporate
Investment Club	Partnership	Joint Tenants (JTWROS)
Tenants in Common	Community Property	Sole Proprietorship

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Guide to opening a new account

OPENING AN ACCOUNT

1. Fill out the <u>Online Application</u> or an <u>unSecure Online Application</u> *if you can't connect to the secure link*

2. An E-mail will be sent to you confirming that we received your online application and an account package with a *username* and *password* will be mailed out within the next business day.

3. Once you receive the account package you will have access to unlimited real time Nasdaq, NYSE and AMEX quotes, graphs, charts and news for three weeks.

4. Sign and return the forms to us to generate an account number. Your account number will be sent to you via e-mail and regular mail. If we do not receive your paperwork within 3 weeks, your account is put on hold. Just send us your completed forms and we will reactivate your unlimited quotes, charts, graphs and news. There is no need to send money.

5. To begin trading you will need to send a minimum of $2,000 in cash (U.S. check) or fully paid stock. If you send a check with your forms your account will be automatically credited.

Misplaced a form? Locate it below, print it out and send it back to us. To expedite the processing of your application, please send all of your forms at the same time. If, for whatever reason, you fill out the online application again, we will send you a new package with a *new* username and *new* password.

- o <u>IRS W-9 form</u> (<u>IRS W-8 form</u> for non-US residents)
- • <u>NYSE Agreement</u> and <u>Application</u>
- • <u>ACAT form</u> for transferring your entire account from another brokerage firm to us .
- • <u>IRA ACAT form</u> for transferring an IRA account
- • <u>ACAT Instructions</u> for details on how to fill out an ACAT or IRA ACAT form
- • <u>Irrevocable Stock or Bond Power</u>

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Individual Account Application Form

How did you hear about us?

Was it one of these? | click on this arrow for choices 🔽 |

Or somewhere else? |

Personal Indentification

| Title | ⊙ Mr.　⊂ Ms.　⊂ Mrs.　⊂ Dr. |

First Name |

Last Name |

Date of Birth
(mm/dd/yy) |

Social Security Number |

Personal Mailing Address

(Datek Securities Corporation is a broker-dealer registered to do business in all states except North Dakota, Florida and Idaho, although registration is pending in the all of these states. If you are a resident of one of these states, we are not allowed to offer you any kind of service. We hope to change this shortly.)

Street Address (no P.O. Boxes) |

City | | State | Zip |

Country | USA

Phone Number |

E-mail |

Please make sure to enter a fully qualified e-mail address.
It should look something like: *powertrader@datek.com*

We use e-mail you to notify you about your account status and the outcome of your orders. You can use Datek Online without an e-mail address. However, if you do not have e-mail at this time and intend to use our services, we *strongly* recommend that you obtain an e-mail account. When you get a new e-mail address or wish to change your current e-mail address, you can inform us of the new e-mail address by going to the Account Options link at the *Quotes and Order Entry* page.

Residency Status

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All securities business with Datek is conducted based on signed written agreements between Datek and the customer. These agreements are binding and nothing you hear over the phone or read on the web can modify them. Please read all agreements carefully.

Datek Securities Corp. believes it has taken every step possible to safeguard its customers and their money. As a customer, you accept the risk of conducting financial transactions via the Internet. Datek Securities Corporation will do everything it can to guarantee the reliability and security of its on-line trading system, but is not responsible if things do not work as expected.

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Are you a citizen or permanent resident of the United States? ⦿ Yes ◯ No

If not, what is your nationality? [   ]

Marital Status

Marital Status   ⦿ Single ◯ Married

\# of Dependents [   ]

Employment Status

Name of Employer [   ]

Occupation   [   ]

Bank Reference   [   ]

Under the penalties of perjury, I certify that the Social Security Number shown on this form is correct and that I am not subject to backup withholding under the provisions of the Internal Revenue Code. (This certification is required by US Government regulation).

Estimated Annual Income From All Sources:	Estimated Net Worth (exclusive of family residence):	Estimated Liquid Net Worth (cash, negotiable securities, etc.):
◯ $25,000 or less	◯ $25,000 or less	◯ $25,000 or less
◯ $50,000 or less	◯ $50,000 or less	◯ $50,000 or less
◯ $75,000 or less	◯ $75,000 or less	◯ $75,000 or less
◯ $100,000 or less	◯ $100,000 or less	◯ $100,000 or less
◯ $200,000 or less	◯ $200,000 or less	◯ $200,000 or less
◯ $500,000 or less	◯ $500,000 or less	◯ $500,000 or less
◯ $1,000,000 or less	◯ $1,000,000 or less	◯ $1,000,000 or less
◯ $1,000,001 or more	◯ $1,000,001 or more	◯ $1,000,001 or more

Investment Objectives (check all that apply):	Investment Experience (check all that apply):
☐ Income	☐ Stocks
☐ Growth	☐ Bonds
☐ Trading Profits	☐ Commodities
☐ Speculation	☐ Options
☐ Safety of Principal	☐ Trading
☐ Other	☐ Other

Transfer Information

Do you want information on how to transfer funds or stock from an account with another brokerage firm?

◯ Yes ⦿ No

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Association Status

Are you or is a relation of yours associated with a securities firm, exchange, insurance company, bank, investment company or investment advisor?

⊙ Yes ◉ No

Name [

Position [

Professional User Status

We need to know if you are a professional user in order to provide you with real-time quotes. Please read the following carefully.

You are a professional user if you are one of the following:
a. A person who is registered or qualified with the Securities and Exchange Commission ("SEC"), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association.

b. A person who is engaged as an "investment advisor" as that term is defined in Section 202(a)(II) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act).

c. A person who is employed by a bank or other organization exempt from registration under Federal and/or State securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

Are you a professional user? ⊙ Yes ◉ No

Control Stock Information

Are you a 10% shareholder of a publicly traded company? ⊙ Yes ◉ No

Company Name [

Datek Securities Corporation Notice

Datek Securities Corporation is a broker-dealer registered to do business in all states except North Dakota, Florida and Idaho although registration is pending in the all of these states.

If you are a resident of one of these states, we are not allowed to offer you any kind of service. We hope to change this shortly.

Datek Securities Corp. customer accounts have extended SIPC insurance for up to $2,500,000 for cash and stock, with no more than $100,000 for cash.

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New Accounts

Learn Here

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☒ Info Desk

☒ Info Desk

☒

**Connect to
the server of
your choice**

☒

☒

☒

☒

☒

☒

TIP OF THE DAY

F a s t e s t Server

http://web.archive.org/web/19970605010546/https://orders4.datek.com/
is currently our fastest full-function server.

http://web.archive.org/web/19970605010546/https://orders6.datek.com/
is our busiest.

Tip Archive

SERVICE UPDATE

Use Account Options to Change Your Password, Change Your E-Mail Address, Give Yourself Margin Capability, and Request a Check or Wire

Just go to the Account Options link on any of Order Servers 2-6, at the bottom of the Quotes page.

**Express
Order
Entry
Service**

☒

**Without
Confirmation
Page**

☒

**With
Confirmation
Page**

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